

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
September 15, 2011

In the Matter BANKS/ROBINSON, Minors.

No. 301981
Wayne Circuit Court
Family Division
LC No. 07-463374

In the Matter of BANKS/ROBINSON, Minors.

No. 301982
Wayne Circuit Court
Family Division
LC No. 07-463374

Before: M. J. KELLY, P.J., and OWENS and BORRELLO, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right the lower court's order terminating their parental rights to the minor children¹ under MCL 712A.19b(3)(b)(i), (b)(ii), (c)(i), (g), (j), and (k).² Because we conclude that there were no errors warranting relief, we affirm.

In April 2007, respondents were living with their two young daughters in a home owned by the paternal grandfather. The police department was frequently dispatched to the home for a variety of reasons, including domestic violence and drug-related criminal activity. Both respondents admitted that the environment in which they were raising their children was unsafe. During one argument, the grandfather fired a gun in the direction of respondent-father, who was

¹ Respondent-father was not the biological father of respondent-mother's oldest daughter. However, he had been a part of the child's life nearly since birth and considered her his daughter. Respondent-mother did not know the identity or whereabouts of her oldest daughter's biological father.

² The trial court did not specify which subsection of MCL 712A.19b(3)(k) applied.

holding his 18-month-old daughter. The gunshot passed through respondent-father's body and entered the child's body, causing life-threatening injuries to the child. As a result of these events, the two children were removed from respondents' care.

Over the course of the next three and a half years, respondents were offered a multitude of services designed to address, among other things, substance abuse and domestic violence. During this time, respondent-mother gave birth to two more daughters who were also removed from respondents' care. The record demonstrates that respondents' progress was inconsistent.

In September 2009, the lower court denied a petition to terminate respondents' parental rights, finding that respondent-mother was in substantial compliance with the treatment plan and that respondent-father should be given additional time to address mental health issues and work toward reunification. Despite this additional time, respondents failed to adequately address the issues that were barriers to reunification. At the conclusion of a second permanent custody hearing, in December 2010, the trial court terminated respondents' parental rights to all four children.

Respondent-mother argues that the statutory grounds for termination were not established by clear and convincing evidence. This Court reviews a trial court's decision to terminate parental rights for clear error. MCR 3.977(K); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

Respondents were offered a multitude of services but were unable to consistently demonstrate that they could provide their children with a safe and stable living environment. The evidence established that respondent-mother sexually abused her oldest daughter, who was three years old at the time of removal, while respondent-father was in the room. The child reported the abuse at the onset, and for over three years she was consistent in her description of the events. She further revealed that the abuse occurred before the children were removed from the home and while the children were in respondents' care during unsupervised day visits. During these three and a half years, the child also sexually acted out in the foster home and was aggressive toward her younger sister. Her history of nightmares and bloody noses was also a symptom of the trauma. The child's therapist found her to be credible, and there was no evidence that the child had been coached or unduly influenced.

In addition to the sexual abuse, there was also overwhelming evidence that the home environment was unsafe and would continue to be unsafe in the event of reunification because respondents had not adequately addressed the issues of domestic violence in their relationship. Respondents were in individual therapy and domestic violence counseling; despite this, the domestic abuse continued. In addition, respondent-father had not learned to control his anger with others and engaged in angry outbursts and intimidation of other members of the community. Dr. Anderson of the Clinic for Child Study evaluated respondents just before the second termination hearing and noted that both respondents continued to minimize the extent of the domestic violence and the impact this violence would have on the children. In light of this lack of insight, Dr. Anderson concluded that there was a strong likelihood of continued violence, which would place the children at risk of harm if returned to respondents' care.

In a cursory fashion, respondent-mother contends that there was not clear and convincing evidence that termination of her parental rights was in the children's best interest. Before terminating parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). Additionally, the trial court must make an affirmative finding that termination of parental rights is in the children's best interests. MCL 712A.19b(5). In this case, there was clear and convincing evidence that termination was in the children's best interests. Respondents were unable to provide a safe, stable, and secure environment for their children. Moreover, respondent-mother's continued contact with her oldest daughter was in fact an impediment to the child's recovery. The older two girls had been in foster care for nearly four years, and the younger two had spent their entire lives in foster care. These children were in desperate need of permanency and stability in order to foster healthy growth and development.

Respondent-father argues that petitioner failed to make reasonable efforts toward reunification. Petitioner must make reasonable efforts to promote reunification and to avoid termination of parental rights. However, petitioner was required to make *reasonable* efforts to rectify the conditions that caused the removal; it was not required to provide every conceivable service that might rectify those conditions. See MCL 712A.18f(1) and (4); *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008). To successfully claim a lack of reasonable efforts, a respondent must establish that he would have fared better if the petitioner had offered other services. *In re Fried*, 266 Mich App 535, 543; 702 NW2d 192 (2005).

After reviewing the record, we conclude that the trial court did not err when it found that petitioner had made reasonable efforts to rectify the conditions that led to the children's removal, to reunify the family, and to avoid termination of parental rights. Respondents were provided with a case service plan, which included a multitude of services directed toward overcoming the barriers to reunification. Respondents were offered, among other services, individual counseling, anger management, domestic violence counseling, substance abuse screening, parenting time, and psychological and psychiatric assessments. Respondent-father did not consistently participate in the services offered and, to the extent that he did participate, clearly failed to benefit from the treatment plan. It was not petitioner's failure to make reasonable efforts toward reunification, but respondent-father's failure to benefit from the services offered, that led to the termination of respondent-father's parental rights.

In support of his argument, respondent-father represents that the court discharged the Homes for Black Children agency as the foster care provider because they were not making reasonable efforts to assist respondents. This is not an accurate characterization of the events. Respondent-mother requested a new foster care worker, and in March 2010 the court ordered that a new worker from the agency be assigned to the case. During the termination hearing, the court contemplated removing the agency, apparently because personality conflicts had arisen between the workers and respondents. At no time did the court conclude that Homes for Black Children was not making reasonable efforts toward reunification, and the court specifically found that reasonable efforts were made.

There were no errors warranting relief.

Affirmed.

/s/ Michael J. Kelly
/s/ Donald S. Owens
/s/ Stephen L. Borrello